

MISC #7

March 8, 1945

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. Hal Mitchell
Assistant Secretary of State
Capitol Building
Phoenix, Arizona

Dear Sir:

In your letter of February 17, 1945, you advised us that the Federal Department of State has addressed to you the following communication:

"It would be very greatly appreciated if you would cause to be prepared for the use of this Office a memorandum or statement setting forth as precisely as possible, with citations to any relevant statutory provisions or court decisions, (1) those types of professional activities in which, in actual practice and under normal peacetime conditions, treaty aliens are permitted to engage in Arizona, and (2) those types of professional activities in which under like circumstances treaty aliens are not permitted to engage in Arizona. Similar information would be appreciated concerning the types of commercial activities in which treaty aliens are permitted, or are not permitted, to engage in Arizona."

and that you would like this office to answer such inquiries.

We do not find a legal definition of "treaty aliens". It is presumed that that phrase refers to friendly resident aliens as distinguished from enemy aliens. However, we shall endeavor to give you a summary of Arizona laws relating to all classes of aliens, and applicable statutes and constitutional provisions will be indicated as may be necessary.

The laws of Arizona impose certain restrictions on aliens in general, but these restrictions are more drastic as applied to aliens not eligible to citizenship of the United States. According to the Federal statute, Title 8, Section 703, as amended, U.S.C.A., the right to become a naturalized citizen accrues only to white persons, persons of African nativity or descent and descendants of races indigenous to the western hemisphere. By amendment of December 17, 1943, the right of naturalization was extended to Chinese persons or persons of Chinese descent.

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Aliens ineligible to naturalization are as follows:

Afghans	Filipinos	Japanese	Polynesians
Arabs	Hawaiians	Koreans	Parsees
Burmese	Hindus	Malayans	

In fact all of the Asiatic races are excluded except the Chinese, who were granted this right recently.

It must be noted however that native born Filipinos who have served honorably in the armed forces of the United States, by special statute, are eligible to naturalization.

In Arizona all aliens, whether eligible or ineligible for citizenship, cannot hold public office or otherwise be employed by state, county, municipal corporations or other political subdivisions. This includes employment on public works, even though a public work is performed by a contractor. (Art. 18, Sec. 10, Const.)

Our statutes regulate certain professions and trades. Here is a list of occupations where citizenship is required and where it is not required:

Occupations requiring citizenship:

Attorneys at law
Certified public accountants
(Or declaration of intention)
College professors
Dentists
(Or declaration of intention)
High school and common school teachers
Liquor dispensing licensees

Not requiring citizenship:

Architects
Assayers
Barbers
Beauty operators
Chiropractors
Embalmers
Engineers
Naturopaths
Optometrists
Pharmacists
Physicians & Surgeons
Real Estate Brokers
Surveyors
Veterinarians

Citizens only may be appointed administrators or executors in probate matters, but aliens may be appointed as guardians. The right to become a guardian however does not extend to aliens not eligible to citizenship. (71-205)

Right to own real property by aliens eligible to citizenship

All aliens eligible to citizenship may acquire, possess, enjoy, transmit and inherit real property or any interest therein, the same as citizens. (71-201)

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Right to own real property by aliens ineligible to citizenship

Aliens ineligible to citizenship cannot own property in this State under any condition whatever, unless by reciprocal treaties between the United States and the country of such alien, it is otherwise provided. For instance, if it appears in any probate proceedings that the heir or devisee of real property belonging to an alien ineligible to citizenship or to the minor child of such alien, must report that fact annually to the Secretary of State. They must also file a verified report in the office of the County Recorder where such property is located. Criminal penalty is imposed upon the fiduciary for failure to file such report. (71-204) Likewise such ineligible aliens cannot own stock in any corporation. Nor can an alien corporation own or hold any land in Arizona. (53-804)

We should note that a foreign corporation is a corporation organized under the laws of an American state, whereas an alien corporation is a corporation organized in a foreign country.

If an alien ineligible to citizenship should acquire property in violation of law and sell the same to one eligible to own it, such a conveyance shall be void as to the State and may through certain court proceedings be escheated to the State. Likewise any property the consideration of which has been paid by such alien, but title has been taken in the name of one legally competent for the purpose of circumventing the inhibition, such property may be forfeited and escheated to the State of Arizona (71-206-07). In such cases the Attorney General or the County Attorney may file an escheat action, but if either of the two officials refuse to bring such an action, a private citizen is then authorized to sue in the name of the State. (71-209)

All aliens whether eligible or ineligible to citizenship, who are public charges and confined to our State Hospital, Industrial School or inmates of the State Penitentiary who are about to be discharged, may be returned to the country of their origin and in such cases the State authorities will cooperate with the immigration authorities. (8-114)

Our workmen's compensation act applies to aliens as well as to citizens. (56-929). However, where the death benefit derived from the workmen's compensation law is to be paid to an alien who no longer resides in the United States, such benefit will be paid only at the rate of 60% of the amount paid if such alien resided in the United States. (56-953)

With the exception of the restrictions above noted, which have been held constitutional by our Supreme Court, as well as by the Supreme Courts of several western states which have similar restrictions, resident aliens, whether eligible or ineligible to naturalization, enjoy the protection of our laws the same as citizens and they cannot be deprived of their life, liberty or property without due process of law. In the case of Takiguchi v. State, decided by our Supreme Court in March, 1936, in which the rights of a Japanese alien were involved, our Court discussing the restrictions on such aliens said:

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"The law was not intended to prevent ineligible aliens from earning a living in the common occupations of the community. If such were its effect, it would run counter to a long line of decisions by the highest court in the land.* * * It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the amendment (14th Amd. to Const. of U.S.) to secure."

We should note in conclusion that the rights of resident enemy aliens are regulated strictly by Federal law which is binding upon all of the States and it supersedes any State legislation that might be in conflict with it.

Very truly yours,

JOHN L. SULLIVAN
Attorney General

HARRY O. JULIANI
Chief Assistant
Attorney General

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